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XV. — *The Stipulative Subjunctive in Latin.*¹

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I WISH to invite the attention of Latinists to a dependent use of the Latin Subjunctive which, so far as I can discover, has received practically no consideration from grammarians, and whose manifestations, so far as observed and commented upon by editors, have been, in my judgment, quite generally misinterpreted. As a typical example of the construction referred to, I cite Plaut. *Bacch.* 873 f. :—

Vis tibi ducentos nummos iam promittier
Ut ne clamorem hic facias neu convicium?
. . . Atque ut tibi mala multa ingeram?

‘Will you agree to take two hundred nummi on the understanding that you are to make no outcry or disturbance . . . and that I am to abuse you roundly?’

To this idiom I have earlier (*Cornell Studies in Classical Philology*, vol. ix, p. 21) given the name ‘Stipulative,’ and further examination of its manifestations at various periods of the language has seemed to me to justify the propriety of this designation. I define the Stipulative as a subordinate subjunctive clause designating primarily some agreement, compact, or understanding under which the main act takes place. As I shall hope to show, the idiom is sharply differentiated both logically and formally from clauses of proviso, and also from conditional clauses, with which latter construction at least one eminent grammarian (Schmalz, *Lat. Synt.*³ § 325) seems to confound it.

As the views here advanced are new, I shall present all the material I have gathered that seems to me to illustrate the usage under discussion. This material, however, is probably not absolutely complete except for Plautus. The examples

¹ Read at the special meeting held at Philadelphia, December, 1900.

cited from other authors have been collected in the course of reading undertaken for other purposes, and represent, therefore, no systematic search.

More commonly the stipulative clause has the simple force of 'on the understanding that, that not'; 'with the agreement that, that not.' Yet, as a perfectly natural outgrowth of this value, we find it developing, under the influence of the context, into a variety of other values. Thus it may mean 'under the restriction that, that not'; 'with the reservation that, that not'; 'on pain of'; 'on the condition that, that not'; in the affirmative form it may also have the force of 'by' with a verbal noun; while with negatives (regularly *ne* or *ut ne*, — always so in the earlier period) it frequently has the force of 'without' followed by a verbal noun ('without saying,' 'without doing,' etc.).

I proceed to the classification of my material : —

a) *Stipulative clauses with the force of 'on the understanding that, that not'; 'under the agreement that, that not.'*

Plaut. *Trin.* 141 : quod meae concreditumst taciturnitati clam fide et fiducia, ne enuntiarem quoiquam neu facerem palam.

ibid. 518 : arcano tibi ego hoc dico, ne ille ex te sciat, neve alius quisquam.

id. Pseud. 55 : ea caussa miles hic reliquit sumbolum . . . ut qui adferret eius similem sumbolum cum eo simul me mitteret.

Ut mitteret cannot be an appositional purpose clause explanatory of *caussa*; *ea caussa* clearly refers to the existence of the debt of five minae mentioned in verse 54.

Ter. *And.* 148 : ita tum discedo ab illo, ut qui se filiam neget daturum.

The meaning of the passage obviously forbids us to take the *ut*-clause as one of result; *ita* merely anticipates the stipulative clause.

Cic. *de lege agr.* i. 3. 9 : etiam illud, quod homines sancti non facient, ut pecuniam accipiant, ne vendant ('receive money on the understanding that they are not to sell'), tamen id eis ipsum per legem licebit.

Caes. *B. G.* i. 9. 4 : obsidesque uti inter sese dent perficit : Sequani (*sc.* obsides dant), ne itinere Helvetios prohibeant, Helvetii, ut sine maleficio transeant.

Greenough, *ad loc.*, says that *ne prohibeant* and *ut transeant* are "object clauses of purpose depending upon the idea of agreement implied in *obsides dent*"; but this seems illogical. The Helvetii would have had no need to give hostages in order not to interfere with the march of the Helvetii; nor would the Helvetii have had occasion to give hostages in order to go through the territory of the Sequani without doing damage. To represent either tribe as giving hostages to achieve these ends is unreasonable.

Doberenz-Dinter⁸, *ad loc.*, observe, "beides von dem Begriffe *obsides dare* abhängig, drückt das aus wofür sie sich verbürgen, Gewähr leisteten"; so far I should give full adherence to their note; but they add, "also *obsides . . . dent* = *obsidibus datis caveant*; *cf.* vii. 2. 2"; this explanation, I shall hope to show, is entirely gratuitous.

Cic. *de Off.* iii. 26. 99 : missus est (*sc.* Regulus) ad senatum ut, nisi redditi essent Poenis captivi nobiles quidam, rediret ipse Carthaginem.

id. pro Quinct. 27. 85 : ita possideto, ut tecum simul possideat ; ita possideto, ut Quinctio vis ne afferatur.

Here again *ita* is merely anticipatory of the following stipulative clauses.

id. de Off. i. 10. 33 : cum utrisque locutum, ne cupide quid agerent, atque ut regredi quam progredi mallent.

Hor. *Sat.* i. 8. 12 : —

Mille pedes in fronte, trecentos cippus in agrum,
Hic dabat, heredes monumentum ne sequeretur.

Livy, i. 3. 5 : pax ita convenerat, ut Etruscis Latinisque fluvius Albula . . . finis esset.

Greenough, *ad loc.*, observes, "often a clause which seems like a result clause, as defining a correlative, is really a purpose clause expressing something which is originally a com-

mand or the like; cf. A. & G. 317. a," where *hoc consilio ut montium tegerentur altitudine* and similar appositional purpose clauses are cited; but the Nepos passage seems to me radically different, and again I find it irrational to recognize in the Livy passage any purpose idea in the *ut*-clause; that the Albula should be the Etrusco-Latin boundary could hardly have been the purpose (in the grammatical sense) of making the treaty.

id. ix. 11. 7: *pacem nobiscum pepigistis ut legiones vobis captas restitueremus.*

Front. *de Aquis*, i. 14: *ut ita demum Claudiam aquam adiuuaret Augusta, si eam ductus Marciae non caperet.*

ibid. ii. 127: (censuere) *placere utraque ex parte quinos denos pedes vacuos relinqui ita ut neque monumentum in is locis neque aedificium post hoc tempus ponere neque conserere arbores liceret.* (A decree of 11 B.C.)

ibid. ii. 128: *eum agrum vendiderunt ut in suis finibus proprium ius res publica privatique haberent.*

Plaut. *Bacch.* 224: *veniat quando volt atque ita ne mihi sit morae.*

Cic. *Phil.* xii. 10. 24: *nuper in suburbium, ut eodem die reverterer, ire non sum ausus.*

Plaut. *As.* 229: *dic quid me aequom censes pro illa tibi dare, annum hunc ne cum quiquam alio sit.*

The *ne*-clause in this last example might possibly lend itself to interpretation as a purpose clause; but substantially the same clause recurs in the contract of the same play (v. 751):—

Diabolus Glauci filius Clearetae lenae dedit dono argenti viginti minas, Philaenium ut secum esset noctes et dies hunc annum totum.

Here the stipulative force is made clear by the context. This consideration impels me to put here the two following instances also:—

Plaut. *As.* 634: *quas hodie adulescens Diabolus daturus dixit, ut hanc ne quoquam mitteret nisi ad se hunc annum totum.*

ibid. 915: *ut viginti minas ei det, in partem hac amanti ut liceat ei potirier.*

id. Epid. 470: *atque ita profecto, ut eam ex hoc exoneres agro.*

Note the language of the verse immediately following :
estne empta mihi istis legibus?

id. Men. 53 : sed ita ut det unde curari id possit sibi.

id. Mil. 979 : vin tu illam actutum amovere, a te ut abeat per gratiam?

The *ut*-clause here clearly cannot be one of purpose, yet the editors, so far as I can find, make no comment upon its real nature.

ibid. 1148 : omnia dat dono, a se ut abeat. Both the sense and the passage just cited lead me to take the *ut*-clause here as stipulative.

id. Capt. 948 : gratiis a me ut sit liber ducito.

The stipulative force seems to me so clear here that I am disposed to recognize it in the two following examples also : —

id. Rud. 929 : pauxillatim pollicitabor pro capite argentum, ut siem liber.

ibid. 1409 : pro illa altera, libera ut sit, dimidium tibi sume, dimidium huc cedo.

Hor. *ad Pis.* 11 : —

Scimus et hanc veniam petimusque damusque vicissim

Sed non ut placidis coeant immitia, non ut

Serpentes avibus gementur tigribus agni.

C.I.L. xi. 1331. *a* : ex voto suscepto . . . ubi vellet poneret . . . posuit Iovi, Iunoni, *etc.*, *i.e.*, 'he erected the monument in accordance with a vow taken on the understanding that he was to locate it where he wished.'

Plaut. *Persa*, 523 : eam te volo curare ut istic veneat, ac suo periculo is emat qui eam mercabitur.

In these last two examples it will be noted that there is no introductory *ut*; the absence of the particle here and in some other examples to be cited later is of importance in determining the origin of the stipulative clause, a point that will be discussed below. In the *Persa* passage, Götz and Schöll put a strong mark of punctuation after *veneat* and apparently take *emat* as independent; this, while possible, seems to me less natural and quite unnecessary.

b) *Stipulative clauses with the force of 'with the restriction that, that not.'*

This type of the stipulative clause is not found before Cicero, and is not frequent at any period of the language; *ita* is usually — perhaps invariably — present in the main clause; it is presumably this circumstance that has led Dräger (*Hist. Synt.*¹ ii. p. 630) to classify such clauses as consecutive in character; but the presence of *ita* in an antecedent clause does not necessarily involve the consecutive character of the following *ut*-clause; the *ita* may be purely anticipatory, having the value of 'on this understanding,' a meaning which has been repeatedly noted in the examples already cited under my first head. Moreover, the negative *ne* (or *ut ne*) occurs repeatedly in these restrictive clauses, and *ne*, *ut ne*, I believe, are never found in truly consecutive clauses. The contrary view, I am aware, is somewhat widely held, particularly by European scholars, but it is in my judgment untenable; *ne* is primarily the negative of the volitive and optative subjunctives; it never appears in the potential, to which the consecutive clause must be assigned for its origin. Under these circumstances we can hardly evade the duty of at least making an honest endeavor to explain all subordinate clauses introduced by *ne* or *ut ne* as of volitive or optative origin. Such an explanation I have thought to find easy and natural in all clauses introduced by *ne* and *ut ne*; many of these are cited by Brix in a well-known note on the *Miles* (v. 149) as consecutive in character, e.g. *Capt.* 738: *atque hunc me velle dicite ita curarier, ne qui deterius huic sit quam quoi — pessumest*; but here the simple and natural interpretation is: 'I wish him cared for with this in view, viz. that he fare no worse,' etc. So also I am persuaded that the *ne*-clause with *facere* is a perfectly natural jussive extension. The usage of Plautus makes it tolerably clear that the original type of substantive clause with *facio* was *fac abeas*, *fac ne abeas*, where the jussive character of the dependent subjunctive is sufficiently manifest. Here *fac* was originally a verb of 'seeing to it' or 'striving,' but the notion of causation easily developed, and thus paved the way for

such syntactical extensions as *faciam ne credas*, in which, while the primitive mechanism of expression is retained, a new logical value has developed. Logically, to be sure, one might interpret such clauses as clauses of result, but any such explanation ignores utterly their origin and development, and fails to account for the negative employed. With *efficere* the *ne* (or *ut ne*) clause is to be explained as following the analogy of *facere ne* (*ut ne*), precisely as *exoro* and *impetro* (the one formally, the other logically) have taken on the construction of *oro*; though with all three of these verbs many scholars are wont to recognize the *ne*-clause as consecutive. For a fuller refutation of the view under consideration, see Durham, "The Subjunctive Substantive Clauses in Plautus" (*Cornell Studies in Classical Philology*, vol. xiii), p. 12 *et passim*.

Illustrations of these restrictive stipulative' clauses follow :

Cic. *pro Scauro*, 4. 5 : qui tamen ipsi mortem ita laudant, ut fugere vitam vetent.

Here the original stipulative force 'on the understanding that' easily develops under the influence of the context into the meaning 'with the restriction that,' 'with the reservation that.'

id. Tusc. Disp. i. 45. 109 : quantum autem consuetudini famaеque dandum sit, id curent vivi, sed ita ut intellegant nihil id ad mortuos pertinere.

id. pro Sex. Rosc. 20. 55 : verum tamen hoc ita est utile, ut ne plane illudamur ab accusatoribus.

Livy, xxii. 5 : ita admissos esse (*sc. in urbem*) ne tamen eis senatus daretur.

Here Greenough and Peck, *ad loc.*, while recognizing the restrictive character of the *ne*-clause, explain it as consecutive ; but it is difficult to believe that the words of Livy ever conveyed any such idea to the Roman mind, nor does it seem natural that a truly consecutive clause should develop the restrictive force. The obstacle to a consecutive interpretation created by the presence of *ne* has been considered above.

C. I. L. vi. 10682 : Musicus et Helenus fili fecerunt et sibi et suis libertis libertabusque posterisque eorum ita ne liceat hunc munimentum vendere.

Front. *de Aquis*, ii. 123 : idoneum structuræ tempus est a Calendis Aprilibus in Calendâs Novembres ita ut optimum sit intermittere eam partem aestatis, quæ, *etc.*

Dräger (*l.c.*) gives some further illustrations of clauses of this type, including unfortunately some that are not restrictive, but belong under our first head (see above, p. 224). Clauses of the type *ita . . . ut non* (instead of *ne*) present a special difficulty and will be considered below (p. 248).

c) *Stipulative clauses with the force of 'on pain of' 'under penalty of.'*

I have noted only the following :—

Plaut. *Men.* 216 : ego hercle vero te et servabo et te sequar, neque hodie, ut te perdam, meream deorum divitias mihi ; originally 'on the understanding that I'm to lose you' ; *i.e.* 'on pain of losing.'

id. Stich. 24 : neque ille sibi mereat Persarum montis, qui esse aurei perhibentur, ut istuc faciat.

Publ. Syr. 577 : rex esse nolim ut esse crudelis velim.

Cic. *Laelius*, 15. 52 : nam quis est . . . qui velit, ut neque diligat quemquam nec ipse ab ullo diligatur, circumfluere omnibus copiis atque in omnium rerum abundantia vivere?

Porphyrion, on Hor. *Car.* ii. 12. 23 : sensus est : num tu velis accipere Parthicas aut Phrygiæ divitias, ut Licymniæ fructum amittas.

d) *Stipulative clauses with the force of 'on condition that.'*

Plaut. *Aul.* 458 : lege agito mecum, molestus ne sis, 'go to law ('on the understanding that,' and so) on condition that you only let me alone.'

id. Curc. 660 : tu ut hodie adveniens cenam des sororiam, hic nuptialem cras dabit : promittimus.

id. As. 455 : sic potius, ut Demæneto tibi ero præsentē reddam.

id. Poen. 1365 : ut sis apud me lignea in custodia.

id. Rud. 1127 : concedam tibi, ac si istorum nil sit, ut mihi reddas.

Sonnenschein, *ad loc.*, correctly recognizes the force of the *ut*-clause here.

Cic. *de Fin.* v. 12. 36 : in sensibus est sua cuiusque virtus, ut ne quid impediatur, quo minus suo sensus quisque munere fungatur.

id. in Vatin. 12. 30 : ita enim illud epulum est funebre, ut munus sit funeris.

Hor. *Epp.* i. 18. 107 : sit mihi quod nunc est, etiam minus, ut mihi vivam, quod superest aevi.

Some scholars would possibly be inclined to recognize in the above examples clauses of proviso, but the term 'proviso' is at present usually applied chiefly to *dum*-clauses. I believe it is best confined to them,¹ as they have a special connotation not possessed by any of the examples just cited. The *dum*-clause implies that the protasis is realized on the fulfilment of what is contained in the clause of proviso, *and on no other*; the stipulative clauses above cited, like ordinary protases with *si*, do not carry this implication.

e) Stipulative clauses with the force of 'by' with a verbal noun.

Instances of this type, so far as I have noted, are confined to Plautus :—

Plaut. *Stich.* 121 : qui potest mulier vitare vitiis? # Ut cotidie pridie caveat, ne faciat quod pigeat postridie ; originally 'on the understanding that she avoid,' and so 'by avoiding.'

id. Pers. 35 : facere amicum tibi me potis es sempiternum. # Quem ad modum? # Ut mihi des nummos sescentos.

id. Mil. 186 : quem ad modum? # Ut eum qui se hic vidit verbis vincat ne is se viderit. Siquidem centiens hic visa sit, tamen infitias eat.

Tyrrell, *ad loc.*, correctly recognizes the force of the *ut*-clause here, but gives no explanation of its origin.

id. Capt. 423 : nunc adest occasio benefacta cumulare, ut erga hunc rem geras fideliter.

Hallidie correctly interprets *ut geras*, but gives no explanation of how its force develops.

id. Truc. 919 : hoc modo, ut ne molestus sis.

¹ A clause of proviso introduced by *ut modo* occurs in Plaut. *As.* 274; and in later Latin a few instances of clauses of proviso with *ut* are found, *eg.* Cic. *de Sex. Rosc.* 20. 55; Sen. *de Ben.* ii. 15. 1; Tac. *Ann.* iv. 38. 1.

Here also I should put : —

id. Pseud. 236 : quonam pacto possim vincere animum? # In rem quod sit praevertaris quam in re advorsa animo auscultes.

Bacch. 477 : itane oportet rem mandatam gerere amici sedulo, ut ipse osculantem in gremio mulierem teneat sedens?

f) (Negative) Stipulative clauses with the force of 'without' with a verbal noun.

Plautus is again the chief representative of the type.

Plaut. *Amph.* 388 : obsecro ut per pacem liceat te alloqui, ut ne vapulem, 'on the understanding that I'm not to be beaten,' and so, 'without being beaten.'

id. As. 718 : licet laudem Fortunam, tamen ut ne Salutem culpem.

Gray, *ad loc.*, takes *ut ne culpem* here as a clause of result.

id. Merc. 145 : dic mihi an boni quid usquamst, quod quisquam uti possiet, sine malo omni aut ne laborem capias, quom illo uti voles?

Here the collocation of the *sine*-phrase with the *ne*-clause is particularly worthy of note.

id. As. 319 : habeo opinor familiarem tergum ne quaeram foris.

id. Aul. 358 : sunt igitur ligna, ne quaeras foris.

id. Miles, 638 : ut apud te exemplum experiundi habeas, ne quaeras foris.

The first five letters of *quaeras* are the practically certain conjecture of Luchs.

The next two examples show *ni* instead of *ne*.

id. Cist. 204 : hanc ego de me coniecturam domi facio, ni foris quaeram.

id. Merc. 693 : parumne est malai rei quod amat Demipho, ni sumptuosus insuper etiam siet?

id. Miles, 1207 : nam si possem ullo modo impetrare ut abiret ne te abduceret, operam dedi.

Salmasius here conjectured *nec* for *ne*, and has been followed by most recent editors, Ritschl, Fleckeisen, Brix, Tyrrell, Götz and Schöll, among others. But *nec* is not only unnecessary; it is positively detrimental to the sense of the

passage. I believe we should adhere to the Mss. in this passage, as does Leo.

id. Most. 412 : —

Verum id videndumst, id viri doctist opus,
Quae dissignata sint et facta nequiter,
Tranquilla cuncta et ut proveniant sine malo,
Niquid potiat, quam ob rem pigeat vivere.

Note again the collocation (here asyndetic) of a *sine*-phrase and an equivalent stipulative clause.

id. Vid. 83 : argenti minam adferam ad te, faenus mihi nullum duis.

Götz and Schöll have a strong mark of punctuation after *te*; but the subjunctive here is quite parallel with the following example, where the same editors place only a comma.

id. Capt. 331 : eum si reddis mihi, praeterea unum nummum ne duis, et te et hunc amittam.

id. Poen. 177 : locum sibi velle liberum praeberier ubi nequam faciat clam, nequis sit arbiter.

ibid. 662 : at enim hic clam furtim esse volt nequis sciat neve arbiter sit.

id. Bacch. 343 : censebam me effugisse a vita marituma ne navigarem tandem hoc aetatis senex.

id. Pseud. 321 : quid nunc vis? # Ut opperiare hos sex dies aliquos modo, ne illam vendas neu me perdas hominem amantem.

Morris, *ad loc.*, expresses the opinion that the *ne*-clause is loosely attached as though dependent on *volo*; neither *ut opperiare* nor *ne vendas*, in his opinion, has advanced far beyond the paratactic stage; but in view of the numerous similar examples already cited I am convinced that *ne vendas* is truly subordinate.

Lorenz's interpretation of *ne vendas* as final, may, I hope, be properly dismissed without discussion.

id. Trin. 663 : tute pone te latebis facile, ne inveniat te honor.

Cic. *de Fato*, 13. 29 : licet etiam inmutare, ut fati nomen ne adiungas et eandem tamen teneas sententiam.

id. de Fin. ii. 20. 64 : (utebatur) vino et ad voluptatem, et ne noceret.

id. in Verr. ii. 2. 30. 74: qui sciret se ita in provincia rem augere oportere ut ne quid de libertate perderet.

id. pro Quinct. ii. 38: qui usque eo fervet ferturque avaritia, ut de suis commodis aliquam partem velit committere, ne quam partem huic propinquo suo ullius ornamenti relinquat.

The influence of this type of stipulative clause seems noticeable also in the elliptical *ne magno sumptu* of Plaut. *Mil.* 750.

The foregoing instances have all fallen into fairly definite logical categories, each of which is an obvious and natural development of the original stipulative force. The following few examples, while, I believe, clearly stipulative, stand by themselves:—

Plaut. *Stich.* 193: haec verba subigunt med . . . ut faciam praeconis compendium itaque auctionem praedicem, ipse ut venditem, 'compel me to dispense with a crier and advertise the sale on the understanding that I'm to act as auctioneer myself'; *ita* again is purely anticipatory of the stipulative clause.

id. Aul. 591: sin dormitet, ita dormitet, servom se esse ut cogitet; almost equivalent to 'remembering that he is a slave.'

Cic. *Par.* 22: nihil demi (potest) ut virtutis nomen relinquatur.

Tac. *Ann.* iv. 8. 8: ita nati estis ut bona malaque vestra ad rem publicam pertineant.

Substantive Stipulative Clauses.

Nearly all of the classes of stipulative clauses above recognized pass readily into substantive clauses. Such substantive clauses occur with considerable frequency at all periods in connection with verbs of 'bargaining,' 'contracting,' and the like; also in apposition with nouns like *condicio*, *leges* ('terms'), *foedus*, etc.

Cic. *de Off.* iii. 24. 92: siquis pepigerit ne illo (*sc.* medicamento) umquam postea uteretur.

Tac. *Ann.* xiii. 14: sane pepigerat Pallas, ne cuius facti in praetritum interrogaretur paresque rationes cum re publica haberet.

Plaut. *Merc.* 536^a: inter nos coniuravimus . . . neuter stupri caussa caput limaret.

Pliny, *Epp.* iii. 12. 1 : paciscor sit expedita.

Plaut. *Capit.* 378 : nunc ita convenit inter me atque hunc, Tyn-dare, ut te aestumatum in Alidem mittam ad patrem ; si non rebitas, huic ut viginti minas dem.

ibid. 395 : dicito patri quo pacto mihi cum hoc convenerit de huius filio . . . ut eum redimat et remittat.

Amph. 225 : convenit urbem, agrum, aras, focos, seque dederent.

id. *Aul.* 257 : memineris convenisse, ut nequid dotis mea ad te afferret filia.

Cic. *pro. Q. Rosc.* 18. 56 : qui restipularetur a Fannio diligenter, ut, quod is exegisset a Flavio, dimidiam partem sibi dissolveret ; *cf.* *ibid.* 38 hac condicione ut, *etc.*

Plaut. *Epid.* 314 : mane me iussit senex conducere aliquam fidi-cinam sibi huc domum, dum rem divinam faceret, cantaret sibi.

The above text is the reading of all Mss. that have pre-served this part of the play (*A* fails here), except that *B*¹ has *dinam*. This variant led Bücheler to propose *quae* (before *dum*), while Götz and Schöll, comparing *Epid.* 500, insert *ut*. But I am disposed to defend the reading *divinam*. In conformity with its jussive origin (a point upon which I shall presently touch), the stipulative clause not infrequently lacks the introductory particle. A number of instances where it is absent have been cited in the material already submitted, *e.g.* *C.I.L.* xi. 1331. *a* ; Plaut. *Persa*, 524 ; *Pseud.* 237 ; Pliny, *Epp.* iii. 12. 1. Additional instances will be cited below. I there-fore see no difficulty in assuming the possibility of the stipu-lative clause in a sentence like *te conduco mihi cantes* ‘I hire you on the agreement that you are to play for me.’ Such a clause while primarily adverbial would, like those previously considered, easily take on a substantive character, and, when projected into past time, would give us precisely such a sen-tence as read by our Mss. in the passage under discussion.

id. *Epid.* 500 : conducta veni ut fidibus cantarem seni.

Ut is here present, but this may signify nothing more than that both forms of expression were recognized in the mechan-ism of the language, just as *impero abeas* and *impero ut abeas*, and scores of similar doublets exist side by side.

id. Truc. 688 : rabonem habeto ut mecum hanc noctem sies.

id. Rud. 1030 : ecquid condicionis audes ferre? # Iam dudum fero, ut abeas, rudentem amittas, mihi molestus ne sies.

Bacch. 1041 : duae condiciones sunt, vel aut aurum perdas, vel ut amator perierit.

Cic. pro Q. Rosc. 13. 38 : hac condicione, ut, si quid ille exegisset a Flavio, eius partem dimidiam Roscio dissolveret; *cf. ibid.* 56 restipularetur, *etc.*

id. in Verr. ii. 5. 22. 58 : ea condicione vixerunt, ut populo Romano nihil darent, Verri nihil negarent.

id. in Cat. iv. 1 : si haec condicio consulatus data est, ut omnis acerbitates, . . . perferrem.

id. pro Arch. 10. 25 : iubere ei praemium tribui, sed ea condicione ne quid postea scriberet.

Nepos, Thras. 3. 1 : fecit pacem his condicionibus, ne qui prae-ter XXX tyrannos et decem . . . afficerentur exsilio.

Livy, xxiii. 7. 1 : pacem condicionibus his fecerunt, ne quis impe-rator magistratusve Poenorum ius ullum in civem Campanum faceret, *etc.*

Suet. Tib. 13 : revocatus est, verum sub condicione ne quam partem curamve rei publicae attingeret; so also *ibid.* 26.

Plaut. As. 234 : in leges meas dabo . . . perpetuom annum hunc mihi uti serviat nec quemquam interea alium admittat.

Ter. And. 199 : te in pistrinum, Dave, dedam usque ad necem, ea lege atque omine, ut si te inde exemerim, ego pro te molam.

Plaut. Most. 359 : ego dabo talentum . . . sed ea lege ut offigantur bis pedes.

Persa, 69 : in ea lege adscribier : ubi quadruplator quempiam iniecit manum, tantidem ille illi rursus iniciat manum.

id. As. 735 : has tibi nos pactis legibus dare iussit. # Quid id est, quaeso? # Noctem huius et cenam sibi ut dares.

id. Aul. 155 : his legibus ducam (*sc. uxorem*), quae cras veniat, perendie foras feratur.

The text of this passage is somewhat uncertain, and *quae* is certainly peculiar, yet the character of the subjunctives is, I think, perfectly clear; it will be noted that the introductory particle is lacking.

Bacch. 328 : signumst cum Theotimo, qui eum illi adferet, ei aurum ut reddat.

id. de Fin. i. 20. 70 : sunt autem qui dicant foedus esse quoddam sapientium, ut ne minus amicos quam se ipsos diligant.

Plaut. *Cas.* 512 : ut alio pacto condiam † quod id quod paratumst, ut paratum ne siet sitque ei paratum quod paratum non erat.

Amph. 1023 : quo modo? # Eo modo ut profecto vivas miser.

Truc. 918 : quo modo? # Hoc modo ut molestus ne sis.

Bacch. 1178 : At scin quo pacto me abducas? # Mecum ut sis.

Aul. 434 : me haud paenitet tua ne expetam, *i.e.* 'I'm satisfied on the understanding that I'm not to see what is yours,' 'the agreement not to seek satisfies me.'

id. Poen. 853 : quo modo? # Ut, enim, ubi mihi vapulandum sit, tu corium sufferas.

Curc. 663 : quid dotis? # Egone? ut semper me alat. The point here is the intentional misapplication of the word *dos*, — 'the marriage portion that I give, is — that he's to give me my daily portion as long as he lives.'

The two following examples are certainly unique, but I believe they belong in this category.

Plaut. *Men.* 966 : spectamen bono servo id est . . . ut absente ero rem eri diligenter tutetur.

Pliny, *Epp.* ii. 14. 6 : tanti constat ut sis disertissimus.

Before proceeding to discuss a few special types of the stipulative clause which remain to be considered, it will be well to determine, if possible, its origin, *i.e.* from what independent use of the subjunctive it has developed. We have already noted that in the affirmative form of the construction we repeatedly find the subjunctive without *ut*, while in its negative form we uniformly find *ne*, *ut ne*. These facts are of the highest significance, and point definitely to either a jussive or optative origin of the construction. That the origin is in the jussive and not in the optative will, I believe, be apparent to all. This is clear from examples like the following, which may be assumed to represent the original type of the construction as it emerged from the paratactic stage.

Plaut. *Epid.* 470 : atque ita profecto, ut eam ex hoc exoneres agro, 'and on these terms, you just pack her out of the country.'

Ut, in all these clauses, must, I think, originally have been an indefinite adverb, presumably with the force of 'just' or 'only'; cf. my *Appendix to Bennett's Latin Grammar*, § 368; Durham, *Subjunctive Substantive Clauses in Plautus*, p. 6.

Pliny, *Epp.* iii. 12. 1: *paciscor sit expedita*, 'I bargain, let it be simple.'

Plaut. *Pseud.* 321: *opperiare hos sex dies, ne illam vendas*, originally 'wait six days, don't sell her.'

id. Merc. 992: *modo pacem faciatis oro, ut ne mihi iratus siet*, 'make peace, only let him not be angry with me.'

Miles, 1098, although not containing a stipulative, exhibits an independent jussive in an admirable state of preparation for taking on stipulative value: *dixi equidem tibi quo pacto id fieri possit clementissime. Aurum atque vestem muliebrem omnem habeat sibi, sumat*, etc.

The theory of jussive origin is supported too by the occasional occurrence of an imperative in stipulative function, e.g. Plaut. *As.* 229: *dic quid me aequom censes pro illa tibi dare, annum hunc ne cum quiquam alio sit?* The answer is *Tune? viginti minas; atque ea lege, si alius ad me prius attulerit, tu vale!*

Note, too, the frequent occurrence of words like *pango*, *paciscor*, *restipulor*, *convenit*, *foedus*, *leges*, *condiciones*, in the clause upon which the stipulative depends.

Originating within limits such as I have above indicated, the stipulative clause, like every other hypotactic construction known to Latin, naturally soon passed beyond its original boundaries. A sentence like *atque ita profecto ut eam ex hoc agro exoneres* is easily understood as having developed from the jussive, and (typically at least) as having once (in pre-historic times) been at the hypotactic stage. But no such explanation is conceivable for a sentence like Cic. *in Verr.* ii. 2. 30. 70: *qui sciret ita se in provincia rem augere oportere ut ne quid de libertate deperderet*. Sentences like this last (and there are many such) can only be explained as natural extensions of an idiom that had its origin under conditions where the subjunctive was truly jussive. Just so soon as the stipu-

lative was established as a fairly definite logical category in the Roman consciousness, its extension beyond the narrow limits of its origin was a foregone conclusion. Precisely the same thing happened here as happened in the clause of purpose. The clause of purpose must have had its origin in the jussive (at least partially), and one may assume *tibi pecuniam do, ut panem emas*, originally 'I give you money; just buy bread' as representing the primitive type. But *pecuniam mutatur, ut panem emat* cannot by any ingenuity be conceived of as ever having been at the paratactic stage. It remains only to explain clauses like this last as extensions of the purpose category, when once established in the Roman consciousness, beyond the limits of its origin. So with the stipulative.

I pass to a discussion of some other types of the stipulative clause:—

With da pignus; iudicem ferre (habere); sponsionem facere.

I first give the material.

a) *da pignus*.

Plaut. *Poen.* 1242: *da pignus, ni nunc perieres.*

id. Truc. 275: *pignus da, ni lignae hae sint quas habes Victorias.*

sint is the reading of *A*; the Palatine Mss. have *sunt*, which is read by Götz and Schöll.

id. Epid. 699: *da pignus ni ea sit filia.*

This is the Mss. reading, but Götz and Schöll, following Oskar Brugmann, read *east*, which is the accepted text in the similar passage in v. 700 of the same play.

The foregoing are the only examples of *da pignus ni* with the subjunctive, and one of these rests on the preference of the reading of *A* as against *P*. Harper's *Dictionary* cites Gell. v. 4. 2 *in quodvis pignus vocabat ni . . . delictum esset* as another instance, but *ni* has no Mss. authority, and is no longer read to-day. On the other hand, Plautus has several clear instances of *ni* with the indicative combined with *da pignus*, e.g. *Cas.* 75; *id ni fit, pignus dato in urnam mulsi*; cf. also *Pers.* 187; *Epid.* 700; see below.

b) *iudicem ferre, habere; arbitrum adigere.*

Livy, iii. 57. 5 : iudicem ferre, ni vindicias dederit.

id. iii. 24. 5 : ni ita esset, multi privatim ferebant Volscio iudicem.

Plautus, *Rud.* 1380 : cedo quicum habeam iudicem, ni dolo malo instipulatus sis nive etiamdum siem quinque et viginti annos natus.

nive is the reading of the Mss. Priscian in citing the passage gives *sive*, which is accepted by Götz and Schöll, Oskar Brugmann, Sonnenschein, and others, along with Priscian's *annos natus* for the impossible *natus annos* of the Mss.

Cic. (?) *pro Scauro*, 22. 45 (B. and K.) : quid igitur, si te Scaurus arbitrum adegisset, ni multo maiores sumptus, multo maiores offensiones, pro censu tuo in columnis fecisses, quam ipse utrum tandem sponsione vinci necesse fuisset.

c) *sponsionem facere.*

Cato, in Gellius, xiv. 2. 26 : nunc si sponsionem fecissent Gellius cum Turio ni vir melior esset.

Cic. *in Verr.* ii. 3. 57. 132 : cum palam Syracusis te audiente maximo conventu L. Rubrius Q. Apronium sponsione laccessivit, ni Apronius dictitaret te sibi in decumis esse socium.

id. *in Verr.* ii. 3. 59. 135 : sponsio est, ni te Apronius socium in decumis esse dicat.

id. *in Verr.* ii. 3. 60. 137 : sponsio facta est cum cognitore tuo Apronio de fortunis tuis omnibus, ni socium te sibi in decumis dictitaret.

id. *in Verr.* ii. 5. 54. 141 : cogere eum coepit sponsionem facere cum lictore suo, ni furtis quaestum faceret.

id. *in Pis.* 23. 55 : quom ego Caelimontana porta introisse dixissem, sponsione me ni Esquilina introisset, homo promptissimus laccessivit.

id. *pro Caec.* 16. 45 : cum optime sponsionem facere possent, ni adversus edictum praetoris vis facta esset.

id. *de Off.* iii. 19. 77 : cum is sponsionem fecisset ni vir bonus esset.

Val. Max. ii. 8. 2 : Valerius sponsione Lutatium provocavit, ni suo ductu Punica classis esset oppressa.

Concerning the character of the *ni*-clause in the foregoing passages, there has been much debate; see especially the minute discussion of Oskar Brugmann (*Ueber den Gebrauch*

des condicionalen NI in der älteren Latinität, pp. 8–17), to whom I am indebted for some of my examples and for references to the earlier literature, part of which was inaccessible to me. The questions involved are two: 1) What is the nature of *ni*? Is it a negative adverb (= *ne*), or is it a conjunction (= *nisi*)? 2) What is the nature of the subjunctive? These two questions, however, while logically distinct, are practically identical. Let us restrict our consideration first to expressions of the type *da pignus ni*.¹ So far as I can find, the traditional explanation makes *ni* here (as in fact in all expressions of the type under discussion) equivalent to *nisi*, and explains the subjunctive as due to indirect discourse; but this explanation of the mood is perilously near a *Machtspruch*; it fails to explain. No indirect discourse is obvious in an expression like Plaut. *Poen.* 1242: *da pignus, ni nunc perieres*; or in *Epid.* 699: *da pignus, ni ea sit filia*. Nor is it clear how a clause introduced by ‘unless’ should develop into the obvious meaning demanded in these passages. Mommsen in his excursus to Cic. *in Verr.* ii. 5. 54. 141 (cited by Brugmann as incorporated in Halm⁸) cuts the Gordian knot by boldly assuming that *ni* (= *nisi*) is used for *si* (‘give me a pledge, in case she be my daughter’), and adds in explanation of this view, “aber mit den Negationen macht der Usus in allen Sprachen wunderliche Confusion.” But we are dealing with a technical legal formula whose diction is presumably scrupulously exact, and unless some adequate explanation can be advanced for the surprising use maintained by Mommsen, I believe we must reject his view. O. Keller, as I learn from Brugmann (p. 10), has advanced the theory that *ni* in the passages under consideration is equivalent to ‘ob nicht.’ In support of this, Keller cites *Truc.* 736: *discant, dum mihi commentari liceat, ni oblitus siem*; but *ni* is here unquestionably equivalent to *ne* (as repeatedly in Plautus and other writers) and the clause is one of fearing, — ‘for fear I have forgotten.’ Brugmann aptly cites *Aul.* 39: *credo aurum inspicere volt, ne subruptum siet*. This usage is fairly common in Plautus; cf. *Persa*, 79: *ne quis obreptaverit*; *Aul.* 647:

¹ I include also one instance of *iudicem habere* (*Rud.* 1380).

ne inter tunicas habeas. Keller's interpretation of *ni* as 'ob nicht,' therefore, would compel us to adopt a special meaning of *ni*, not elsewhere exhibited, for the explanation of the construction under discussion, and this, as Mommsen justly observes, is hardly legitimate.

Another explanation of the subjunctive in these passages regards it as potential, but Brugmann properly rejects this on the basis of an exhaustive examination of early usage, as well as on the basis of the signification of the *ni*-clause itself. The same scholar, accordingly, would write the indicative in all the Plautine passages above cited, except *Rud.* 1380. This attitude involves a departure from the Mss. in *Epid.* 699 and *Poen.* 1242, and the preference of the reading of *P* as against *A* in *Truc.* 275. This seems to me a very radical procedure; it would be quite as justifiable in my judgment to conjecture away the indicatives handed down in our Mss. and substitute subjunctives for them in the four passages where the indicative alone is read. Thus it would be easy to conjecture *sit* for *fit* in *Cas.* 75; *Persa*, 186 might be made to read: *da hercle pignus ni omnia meminerim et sciam*; so *Epid.* 700: *ni ergo matris filia sit.* (*Rudens*, 713, I should leave out of account, as the text is incomplete; *ergo dato*, given by Brugmann, is purely conjectural.) But this, too, would be radical. The only methodical course, it seems to me, is to follow our Mss. and read the subjunctive in *Epid.* 699; *Poen.* 1242; *Rud.* 1380. In *Truc.* 275, too, I should give the decided preference to the subjunctive *sint* (*A*) as being the *lectio difficilior*. In *Rud.* 1381, I should (with Leo) follow the Mss. and read *nive*, accepting Priscian's *annos natus* (for the impossible *natus annos* of the Mss.), but rejecting his reading *sive*.

The subjunctives in these passages, I believe, are stipulative in character. *Ni* is a negative whose use as the equivalent of *ne* is sufficiently well attested. The regular use of *ni* in the *sponsio* I should explain as a perfectly natural retention of an archaic word in legal formulas, such as we are unquestionably dealing with. *Epid.* 699, I accordingly interpret as meaning originally 'bet me, on the understanding

that she's not my daughter,' *i.e.* 'bet me she's not'; *Poen.* 1242: 'bet me you're not fibbing'; *Rud.* 1380: 'bet me you didn't act crookedly'; *Truc.* 275: 'bet me the coins aren't counterfeit.' This gives us a perfectly simple explanation of the subjunctive, and the only adequate one that has been advanced, so far as I can find. With expressions of this kind, too, the stipulative clause is precisely what might be expected. If any word lends itself easily to combination with a stipulative subjunctive, that word certainly is *pignus*. In retaining *nive* (Mss.) in *Rud.* 1381, I am influenced primarily by the impossibility of accounting for the mood of *siem* except upon the theory that it is stipulative. The explanation becomes perfectly natural when we interpret the *nive siem* as a stipulative emanating from the point of view of Labrax, just as *ni instipulatus sies* emanates from the point of view of Gripus, *i.e.* Labrax proposes they make a wager, Gripus to the effect that he has not acted crookedly, Labrax to the effect that he is not yet twenty-five years old.

The indicatives with *ni* remain. Here *ni* is obviously used in the sense of *nisi*, a use which, I believe, grew up after the analogy of *si* with the indicative, a construction also employed after *da pignus*, etc.; *cf. Persa*, 186; *da hercle pignus, ni omnia memini et scio, et quidem si scis tute quot hodie habeas digitos in manu*; *Pseud.* 1070: *roga me viginti minas . . . sive eam tuo gnato hodie, ut promisit, dabit*. But the recognition of the existence of two practically equivalent constructions of different origin with one verb need give us no more surprise in the case of *da pignus* than, for example, with *cave*, which may be followed either by *ne* with the subjunctive or by the subjunctive alone.¹

The above conclusions concerning the nature of the subjunctive in the *ni*-clauses following *da pignus* lead me to suggest reading *ni* for Mss. *si* in Plaut. *Pseud.* 1071. The

¹ In *cave abeas* we have either an analogical extension of *fac abeas* (*cf. Morris, Am. Jour. Phil.* xviii. p. 298; Delbrück, *Grundriss d. Vergl. Synt.* 3, p. 420) or a jussive protasis that has developed into an object clause (see my *Latin Grammar*, § 305. 2); in *cave ne abeas* we probably have an object clause that has developed directly from the prohibitive.

subjunctive *sit potitus* can hardly be satisfactorily explained on any other basis. Brugmann, *l.c.* p. 13 f., has pointed out with great fulness the objections to the present reading and, besides enumerating the conjectures of other scholars, has himself proposed to reconstitute the verse as follows: *si illic hodie illac erit potitus muliere*. It is much simpler and much more methodical, I believe, to change *si* to *ni* and to explain *sit potitus* as stipulative. *Roga me viginti minas in* 1070 is logically equivalent to *pignus dabo in viginti minas*; if so, *ni potitus sit* (used aoristically in the sense of *potiatur*) becomes perfectly simple.

In view of the foregoing discussion, I hope that the application of the stipulative interpretation to expressions of the type *iudicem ferre, sponsionem facere, sponsione laccessere*, will not require further defence. Many of the passages are obviously extensions of the original type, — always so where we have an imperfect or pluperfect subjunctive; yet Cic. *in Verr.* ii. 3. 135: *sponsio est, ni te Apronius socium in decumis esse dicat*, gives an instance of the original form. The imperfect and pluperfect subjunctives might, so far as the mood is concerned, be accounted for on the theory of *oratio obliqua*, but the employment of *ni* (instead of *si*) would in that case still await explanation.

Tanti, non tanti, ut; ne.

This idiom, so far as I can find, appears first in Cicero, and from his day on is fairly common in both prose and poetry; I have noted it as late as Claudian. Yet despite the frequency of the idiom, the character of the subjunctive occurring in it has, in my opinion, been almost universally misinterpreted. I first present my material (probably not entirely complete):

Cic. *pro Q. Rosc.* 8. 22: certe tanti non fuissent, ut socium fraudaretis.

id. pro Caec. 7. 18: non putavit esse tanti hereditatem ut de civitate in dubium veniret.

Cael. in Cic. *ad Fam.* viii. 14. 1: tanti non fuit Arsacem capere, ut earum rerum quae hic gestae sunt spectaculo careres.

id. de Off. iii. 20. 82 : est ergo ulla res tanti aut commodum ullum tam expetendum ut viri boni splendorem et nomen amittas?

id. ad Att. xi. 16. 2 : ego non adducor quemquam bonum ullam salutem putare mihi tanti fuisse, ut eam peterem ab illo.

Prop. iv. 11. 3. [M] : —

Tantine ulla fuit spoliati gloria Parthi
Ne faceres Galla multa rogante tua?

id. iii. 8. 55. [M] : —

Ne tibi sit tanti Sidonia vestis
Ut timeas quotiens nubilus auster erit.

Ovid, *Am.* i. 10. 49 : —

Non fuit armillas tanti pepigisse Sabinas
Ut premerent sacrae virginis arma caput.

id. Am. ii. 5. 1 : nullus amor tanti est . . . ut mihi sint to maxima vota mori.

Petron. *Sat.* 62 : ut mentiar nullius patrimonium tanti facio.

Lucan, *Phars.* iii. 51 : nec vincere tanti, ut bellum differret, erat.

Sen. *de Ben.* iii. 23 : tanti iudicaverunt, ne domina occideretur, videri dominam occidissee.

ibid. vi. 22 : est tanti, ut tu coarguaris, ista concidere?

ibid. vi. 34 : qui optat amico aliquam necessitatem, quam adiutorio suo fideque discutiatur, quod est ingrati, se illi praefert et tanti aestimat illum miserum esse, ut ipse gratus sit, ob hoc ipsum ingratus.

Tac. *Dial.* 40. 7 : sed nec tanti rei publicae Gracchorum eloquentia, ut pateretur et leges.

Pliny, *Epp.* viii. 9. 2 : nulla enim studia tanti sunt ut amicitiae officium deseratur.

Juv. iii. 54 : —

Tanti tibi non sit opaci
Omnis harena Tagi quodque in mare volvitur aurum,
Ut somno careas ponendaque praemia sumas
Tristis et a magno semper timearis amico.

id. x. 98 : —

Sed quae praeclara et prospera tanti
Ut rebus laetis par sit mensura malorum?

Claud. *in Ruf.* ii. 249 : non est victoria tanti ut videar vicisse mihi.

Juvenal x. 98 (just cited) is a typical example of the idiom to be considered. On this, Mayor offers the following labored explanation: "What glory or success is of so great value that the measure of misfortunes should [*i.e.* that one should be content that it should] equal the prosperity?" This is certainly taking great liberties, and, as I think I shall show, entirely gratuitous liberties, with the Latin. Mayor, like practically all others who have given attention to this type of expression since Madvig's day, takes the *ut*-clause as one of result, and to meet the evident necessities of the meaning of the passage, foists upon the result clause a meaning which clauses of result do not elsewhere have. If *ut sit* in the Juvenal passage can mean 'that it should be,' then *tam vehementer currit ut cadat* ought to be capable of meaning 'he runs so hard that he should fall.' That this is inadmissible would, I think, be the verdict of most Latinists. In fact, the special meaning attached to the subjunctive by those who take the clause as consecutive in expressions of this type is one adopted solely to support the consecutive interpretation and, so far as I am aware, never elsewhere applied.

An examination of the very numerous examples of the idiom I have gathered points clearly to another origin of the *ut*-clause occurring in it. In the negative type of the clause after *tanti*, we never have *ut non*, but *ne*, *e.g.*:—

Propertius, iv. 12. 8:—

Tantine ulla fuit spoliati gloria Parthi
Ne faceres Galla multa rogante tua.

Sen. *de Ben.* iii. 23: Tanti iudicaverunt, ne domina occideretur, videri dominam occidissee.

The evidence, then, again points to a jussive origin for the subjunctive after *tanti*, *non tanti*, and the examples of the construction without exception all lend themselves most easily and naturally to this interpretation. Thus the last one, from Seneca, plainly means 'they deemed it worth while (*tanti*) to seem to have murdered their mistress, on the understanding that she wasn't really to be murdered.' So

the Juvenal passage: 'What glory or prosperity is worth while, on the condition that it is to be equalled by misfortune?'

Cf. also the following:—

Cic. *pro Caec.* 7. 18: non putavit esse tanti hereditatem ut de civitate in dubium veniret, 'he did not deem the inheritance worth while, on condition of hazarding the loss of his citizenship.'

Cic. *de Off.* iii. 20. 82: Est ergo ulla res tanti aut commodum ullum tam expetendum, ut viri boni splendorem et nomen amittas, 'is any thing worth while, if it is on pain of forfeiting the glory and name of an honest man?'

Ovid. *Amor.* i. 10. 49:—

Non fuit armillas tanti pepigisse Sabinas
Ut premerent sacrae virginis arma caput.

Pliny, *Epp.* viii. 9. 2: nulla enim studia tanti sunt, ut amicitiae officium deseratur, 'no studies are worth the while, if they entail abandonment of friendship.'

Ut, then, in expressions of this kind is not correlative with *tanti* in the sense of 'of so much importance that,' but *tanti* is used absolutely in the sense of 'worth the while'; *cf.* Cic. *ad Att.* ii. 13. 2: *Iuratus tibi possum dicere, nihil esse tanti*; v. 8. 3: *Nihil nobis fuerat tanti*; xiii. 42. 1: *Nunc nihil mihi tanti est. Faciam quod volunt*; v. 20. 6: *Quid quaeris? fuit tanti*; and very frequently elsewhere.

This view of the *ut* and *ne*-clauses after *tanti*, *non tanti*, receives the strongest confirmation from the closely related *dum*-clauses¹ used after the same words, *e.g.*:—

id. in Cat. i. 9. 22: Sed est mihi tanti, dum modo ista privata sit calamitas et a rei publicae periculis seiungatur.

id. in Cat. ii. 7. 15: est mihi tanti, Quirites, huius invidiae tempestatem subire, dum modo a vobis huius belli periculum depellatur.

In the following passage we have both an *ut*-clause and a *dum*-clause after *tanti*.

¹ For the difference between the clause of proviso and the stipulative clause, see above, p. 231.

Ovid, *Rem. Am.* 750:—

Non tamen hoc tanti est, pauper ut esse velis.
At tibi sit tanti non indulgere theatris,
Dum bene de vacuo pectore cedat amor.

For much of the material on *tanti ut*, I am indebted to Madvig (*Opusc. Acad.* 1842, vol. ii. pp. 187–195). Madvig discusses the idiom at length and rightly interprets its logical value, but in explaining the *ut*-clause as consecutive he, in common with subsequent scholars, is, I believe, in error.

Stipulative Clauses Introduced by ut non.

Lastly, I wish to call attention to the following clauses introduced by *ut non*: the material, I believe, is fairly complete for Cicero, the author to whom it is mainly confined.¹

Cic. *pro Q. Rosc.* 56: quem ad modum suam partem Roscius suo nomine condonare potuit Flavio, ut eam tu non peteres?

id. Div. in Caec. 13. 44: cuius ego ingenium ita laudo ut non pertimescam.

id. pro Balbo, 20. 46: potest igitur, iudices, L. Cornelius condemnari ut non C. Mari factum condemnetur?

id. in Pis. 24. 56: neque enim quisquam potest exercitum cupere aperteque petere ut non praetexat cupiditatem triumphi.

id. de imp. Cn. Pomp. 7. 19: non enim possunt una in civitate multi rem ac fortunas amittere, ut non plures secum in eandem trahant calamitatem.

ibid. ruere illa non possunt, ut haec non eodem labefacta motu concidant.

id. Phil. viii. 1. 2: potest enim esse bellum ut tumultus non sit, tumultus esse sine bello non potest.

id. Phil. xi. 5. 12: quidvis patiendum fuit, ut hoc taeterrimum bellum non haberemus.

id. Phil. xiv. 11: cui viginti his annis supplicatio decreta est, ut non imperator appellaretur?

id. de Fin. ii. 22. 71: malet existimari bonus vir ut non sit quam esse ut non putetur.

¹ Cf. Dräger, *Hist. Synt.*¹ ii. p. 631. Dräger recognizes the idiom, treating the subjunctive as consecutive.

id. Tusc. Disp. i. 11. 23 : quare si, ut ista non disserantur, liberari mortis metu possumus, id agamus.

id. Lael. 20. 76 : ut neque rectum neque honestum sit nec fieri possit ut non statim alienatio disiunctioque facienda sit.

Hor. *Epp.* i. 18. 16, *scilicet ut non sit*, etc., is sometimes classed with the foregoing material, but the word order is against this interpretation : *sit* and *elatrem* are probably deliberatives.

It was with some hesitation at first that I classed the above clauses introduced by *ut non* as stipulative, yet the use of *non*, *neque* where we should expect *ne*, *neve* is so common, that the use of *non* here need cause no surprise. Thus from the earliest period we find *non*, *neque* used with the optative subjunctive, e.g. Plaut. *Cist.* 555 ; Cic. *ad Att.* xi. 9. 3 ; Plaut. *Curc.* 27 ; *Pseud.* 271 f. ; Cic. *pro Cael.* 6. 14. So with the prohibitive, e.g. Plaut. *Stich.* 149 ; *Rud.* 1028 ; *Bacch.* 476 ; *Capt.* 605. Also in adversative ("concessive") clauses introduced by *ut*, e.g. Cic. *Tusc. Disp.* i. 18. 16 ; *ad Att.* ii. 15. 2 ; *Phil.* xii. 3. 8. Cf. also the late use of *dum modo non* in Juv. vii. 222. In the stipulative itself, in conformity with its jussive origin, the negative is regularly *ne*,—invariably so in the early period ; yet *nec* occurs in Plaut. *As.* 236, and in Cic. *Laelius*, 15. 52. Under these circumstances I believe we have sufficient warrant for admitting the possibility of *ut non* in a truly stipulative construction. So far as meaning is concerned, it seems impossible to explain the above clauses with *ut non* as consecutive, though all scholars who have expressed an opinion upon the subject adopt this view. On the other hand, they all are perfect examples of the stipulative, illustrating familiar types discussed in the earlier part of this investigation, particularly types (*a*) and (*f*).

As stated at the outset of this paper, the grammarians give in effect no recognition to the idiom I have been discussing. Schmalz, in the third edition of his *Syntax*, § 325, observes "Das aus dem konsekutiven *ut* ohne weiteres sich ergebende konditionale *ut* gehört der ganzen Latinität an." He then cites a solitary example, Publ. Syrus, 577 : *rex esse nolim, ut esse crudelis velim*. But this example represents

but one phase, and a relatively infrequent phase, of our idiom, while its consecutive character, as maintained by Schmalz, has been, I think, fully disproved. I question, too, whether the term "condizionales," which Schmalz applies to the *ut*-clause in the example from Publius Syrus, at all accurately designates the force of the clause here. Certainly it would be entirely inadequate to cover the great bulk of the examples I have quoted.

Riemann, *Syntaxe Latine*³, p. 333, § 197, Rem. II, recognizes our restrictive type¹ of the stipulative, but only by the scantiest reference, and, like Schmalz, takes it as consecutive in character, even when introduced by *ne* (§ 199). Beyond recognition of the restrictive stipulative, he does not go. The origin of the stipulative clause, its fundamental force, and its other important logical developments, he ignores. Apart from Schmalz and Riemann, I have found no recognition of the construction in any quarter where one might naturally look for it. The dictionaries likewise ignore it.

¹ Allen and Greenough (*Lat. Gram.* § 319. *b*) also recognize the restrictive use, but despite the negative employed in it (*ne, ut ne*) class the clause as one of result.